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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

CENTER FOR COMMUNITY ACCESS, and )  
MICHIGAN PARALYZED VETERANS, )  
OF AMERICA )

Plaintiffs, )

v. )

CITY OF DETROIT, MICHIGAN, )

Defendants. )

Case No: 2:05CV73475

HON. GERALD E. ROSEN:

MAGISTRATE JUDGE KOMIVES

FIRST AMENDED COMPLAINT

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Preliminary Statement

1. The Center for Community Access ("CCA"), is a 501(c)(3) non-profit, membership based, grassroots organization dedicated to assisting individuals with disabilities in becoming all that they can be. CCA's mission is to raise the status of people with disabilities, which is accomplished through educating, advocating and celebrating our differences and the commonality we share as human beings. CCA educates people with disabilities about their rights, and also educates the public on the obligations and responsibilities society has toward people with disabilities. CCA advocates for the individual and collective rights of people with disabilities in order to gain freedom of movement and access to the greater community.

2. The Michigan Paralyzed Veterans of America (MPVA), is a membership organization which conducts business in Detroit and across Michigan, representing veterans with disabilities, and also has members who live in, or who frequently work, travel and visit throughout the in the City of Detroit. The Mission of Michigan Paralyzed Veterans of America is to enhance the lives of veterans with spinal cord injury or disease as well as all citizens with disabilities, by advocating for civil rights, assuring quality health care, supporting continued research and education, and encouraging independence and healthy living through various health sports and recreational programs. MPVA shall continue striving to remain at the forefront of veterans' benefits, services and disability rights, while working toward a better quality of life for all American citizens.

3. Recently Detroit resurfaced several streets and otherwise altered sidewalks used by CCA, MPVA and their members while failing to ensure that those intersections and sidewalks are readily accessible to and usable by CCA, MPVA, its members and others similarly situated. At times, Detroit failed to install any curb cuts while resurfacing these intersections. Other times, Detroit resurfaced intersections while leaving old, defective curb cuts. And at other intersections, Detroit installed new curb cuts, but those curb cuts are too steep, have large lips, or have other violations of accessibility standards making them unusable by MPVA and its members.

4. Detroit's illegal activity creates lack of access and frustrates the mission of the CCA and the MPVA and has caused them and their members financial harm.

## II. JURISDICTION AND VENUE

5. This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3); 29 U.S.C. § 794(a) (Rehabilitation Act); and 42 U.S.C. § 12133 (Title II of the Americans With Disabilities Act);

6. Venue is proper under 28 U.S.C. § 1391(b) because the Defendant is located in the Eastern District and the events and/or omissions giving rise to Plaintiffs' claims occurred in the Eastern District.

7. Jurisdiction in Count II is based on this Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367, because the Michigan State law claims arise out a common nucleus of facts with the federal law claims.

### III. PARTIES

#### A. Plaintiffs

8. The Center for Community Access, Inc., operating in central Detroit, Michigan, is a nonprofit Michigan Corporation. Its Board of Directors and staff, is composed of a majority of people with mobility and/or sight disabilities, along with volunteers. These persons have disabilities as defined under the Americans with Disabilities Act, under Section 504 of the Rehabilitation Act, and under applicable Michigan law. The CCA was created to assure equality of opportunity, full participation, independent living and economic self-sufficiency. Defendants' conduct has and is frustrating the CCA's mission, and the Center has suffered financial harm attempting to overcome discrimination by the City, and it has many members and clients who are suffering from the City's violations of accessibility law. CCA and its employees, members and clients will continue to suffer exclusion from full participation in the grand concourse of life unless and until the court remedies the City's continuing, over-arching pattern and practice of discrimination against people with disabilities.

9. The Michigan Paralyzed Veterans of America, Inc., (MPVA), is a nonprofit Michigan Corporation. Its Board of Directors, staff and members are people with mobility disabilities as defined under the Americans with Disabilities Act, under Section 504 of the

Rehabilitation Act, and under applicable Michigan law. The MPVA was created to assure equality of opportunity, full participation, independent living and economic self-sufficiency. Defendant's conduct has and is frustrating the MPVA's mission, and the MPVA and its members have suffered financial harm attempting to overcome discrimination by the City, and are suffering from the City's violations of accessibility law. They will continue to suffer exclusion from full participation in the grand concourse of life unless and until the court remedies the City's continuing, over-arching pattern and practice of discrimination against people with disabilities.

#### B. DEFENDANTS

10. Defendant City of Detroit is authorized under the State of Michigan and is a public entity as that term is defined under 42 U.S.C. § 12131(1); 28 C.F.R. § 35.104. Upon information and belief, the City has received and will continue to receive federal funds for purposes of the Rehabilitation Act and for the Civil Rights Restoration Act, 29 U.S.C. § 794(b)(1)(A). The City has discriminated against MPVA as described below.

#### IV. FACTS

11. Veteran Maurice Jordan is the Executive Director of Plaintiffs MPVA. He lives in suburban Detroit, and frequently conducts business and pleasure trips throughout Detroit. He drives his own van, but he must rely on a power assist wheelchair for mobility.

12. Veteran Michael Harris is the Advocacy Director of Plaintiffs MPVA. He lives in suburban Detroit, and frequently conducts business and pleasure trips throughout Detroit. He drives his own car, but he must rely on a manual wheelchair for mobility.

13. Veteran Quintin Williams is an employee and member of Plaintiff CCA and is a member of Plaintiff MPVA. He lives in suburban Detroit, and frequently conducts business and pleasure trips throughout Detroit. He drives his own van, but he must rely

on a manual wheelchair for mobility.

14. When in Detroit, like many others, Mr. Jordan, Mr. Harris and Mr. Williams use sidewalks to move about. However, if those sidewalks are defective, or if they lack proper curb cuts at intersections, these gentlemen must leave the sidewalk and travel in the street, at great personal risk and inconvenience. This is true for most other members of CCA and MPVA as well.

15. When Detroit resurfaced the streets or altered the sidewalks described below, it created an excellent opportunity for Detroit to remove old solid curbs or defective curb cuts and to install proper accessible curb cuts at those resurfaced intersections. But Detroit ignored these opportunities, and instead altered intersections and sidewalks without installing accessible curb cuts. Detroit left these sidewalks and intersections inaccessible to CCA, MPVA, and their employees and members. This inaccessibility is hampering the organizations in carrying out their missions, and is draining their resources unnecessarily. While listing each such violation can not be done in this Complaint, Plaintiffs provide five transactions with examples of this discrimination by Detroit below. These are merely examples of identical violations across the City.

#### **STREETS ADJACENT TO THE UNITED STATES COURTHOUSE**

16. CCA, MPVA and its members intend to seek justice in the United States District Courthouse located at 231 West Lafayette Boulevard in Detroit. During year 2005, Detroit altered intersections directly adjacent to the Courthouse, but installed defective curb cuts. Some of these curb cuts are prohibitively steep, with excessive cross slopes and no level landings. When CCA, MPVA or their members park in commercial parking lots across the street from the Courthouse, these curb cuts leading toward the Courthouse are not readily usable by nor accessible to Plaintiffs.

## **STREETS ADJACENT TO COMERICA PARK AND FORD FIELD.**

17. MPVA has and still is working with the Detroit Lions football team and the Detroit Tigers baseball team to improve accessibility at Ford Field and Comerica Park. Both Mr. Jordan and Mr. Harris and many other members of CCA and MPVA have attended events at these stadiums. Tens of thousands of persons attending events there must find parking in surface lots and parking garages in the neighborhood surrounding these two stadiums. The sidewalks and intersections in this neighborhood are crucial for CCA, MPVA members to access the stadiums from these numerous parking garages and surface lots.

18. During years 2004 and 2005, Detroit altered most of the streets and intersections connected to these parking lots and garages, and adjacent to the two stadiums. These streets include Woodward Avenue, Park Avenue, West Adams Avenue, Clifford Street, West Elizabeth Street and West Montcalm Street. At the same time, Detroit rebuilt all or parts of most of the sidewalks parallel to these streets and intersections. Unfortunately, Detroit built many of these sidewalks incorrectly, with cross slopes in excess of two percent. In addition, many of these intersections now lack curb cuts, or still have curb cuts that violate federal and Michigan minimum accessibility codes. For example:

A. During year 2005, the City of Detroit resurfaced Montcalm Street at Woodward Avenue, directly adjacent to Comerica Park. That intersection now has 2 new diagonal ramps on the west side of Woodward and 2 old ramps on the east side. The old ramps lack detectable warnings and have substantial lips, and are dangerous for Plaintiffs and their members to use.

- The northwest corner has a broken lip that is up to 2 inches on the north side of the ramp, a running slope of 12.6%, cross-slopes of 10.6% and 7.3% and

no level landing.

- The southwest corner has a broken lip on both edges of the ramp, cross-slopes of 2.5% and 4.0% and no level landing.

B. The entire intersection at Montcalm and Clifford was resurfaced. New sidewalks and curbs were installed on the west side of Clifford and around the northwest and southwest corners. Four new diagonal ramps were installed at the four corners of the intersection.

- The northwest corner has a 3 inch lip. The detectable warning was not pressed deeply enough into the concrete and is barely visible. The new sidewalk around the corner has cross-slopes as high as 4.5%.
- The northeast corner has a lip, a running slope of 8.6%, cross-slopes of 6.1% and 6.2% and no level landing.
- The southeast corner has a lip, a running slope of 10%, cross-slopes of 5.1% and 9.2% and no level landing.
- The southwest corner has a reverse lip, a running slope of 11.4% and cross-slopes of 4.5% and 4.8% and no level landing. The detectable warning is barely visible.

19. Similar access violations exist at several sidewalks and intersections directly adjacent to Montcalm and Woodward, and several other sidewalks and intersections in that neighborhood. These defects should be corrected immediately, so that CCA, MPVA, its members, Mr. Jordan, Mr. Harris, Mr. Williams and others can safely access the two professional sports stadiums, especially since the Super Bowl is being held at Ford Field this year. Accessible sports stadiums are not of much use if Detroit fails to make an accessible route from event parking to the stadiums.

**EAST LARNED STREET ADJACENT TO THE COLEMAN A. YOUNG MUNICIPAL CENTER AND CLOSE TO THE RENAISSANCE CENTER AND RIVER WALK**

20. During year 2005, Detroit resurfaced East Larned Street from Woodward Avenue to Interstate 375. Virtually every intersection along this stretch contains curb cuts that violate federal and Michigan accessibility codes, and are too steep, have large lips, have excessive cross-slopes, and/or lack level landings and detectible warnings. These intersections are not readily usable by nor accessible to Mr. Jordan, Mr. Harris, Mr. Williams, Plaintiffs CCA and MPVA and their members.

21. Mr. Jordan, Mr. Harris, Mr. Williams, Plaintiffs CCA and MPVA and their members have used the Coleman A. Young Municipal Center and businesses nearby, and intend to do so in the future if the corrections are made to create fully accessible curb cuts at these intersections.

**THE EASTERN MARKET**

22. Detroit's Eastern Market is a heavily used area, visited by approximately forty-five thousand persons each Saturday, including at times CCA and MPVA and their members Mr. Jordan, Mr. Harris and Mr. Williams, among others. During years 2004 and 2005, Detroit resurfaced major intersections in the Eastern Market, including Russell Street from Mack to Gratiot, and Winder from Orleans to Rivard, and installed new curb cuts at many of these intersections. These intersections and new curb cuts are very dangerous, and are not readily usable by and accessible to CCA, MPVA and their members, and those similarly situated. For example:

- A• At the intersection of Mack and Russell there are 3 new ramps on the southeast and southwest corners.



- The southwest corner facing north has a rolled lip, a running slope of 12.5% for an 8 foot run and no level landing (4.5% X 2.0%).
- The southwest corner facing east has a rolled curb with a 1 inch lip, a running slope of 13.8% for an 8 foot run and no level landing.
- The southeast corner has one diagonal ramp with a 1 inch lip, a running slope of 16.7% for a 7 foot run and no level landing (3.7% X 4.6%).

B. At the intersection of Russell and Wilkens there are four new diagonal ramps.

- The northwest corner has a rolled curb with a 2 inch lip, and no level landing (3.7% X 5.5%). The detectable warning wraps around the corner and is not oriented to the crosswalk.
- The northeast corner has a running slope of 9.3%, cross-slopes of 5.8% and 3.9%, and no level landing. The detectable warning wraps around the corner and is not oriented to the crosswalk.
- The southeast corner has cross-slopes of 5.7% and 5.1% and no level landing. The detectable warning wraps around the corner and is not oriented to the crosswalk.
- The southwest corner has a rolled curb with a 2 inch lip, a running slope of 8.8%, cross-slopes of 4.0% and 6.4%, and no level landing. The detectable warning wraps around the corner and is not oriented to the crosswalk.

C. At the northwest corner of Russell and Alfred the ramp has a 2" lip and faces a solid curb on the other side of the street.

D. At the intersection of Winder and Rivard there is one new diagonal ramp on the northeast corner. It is scooped with steeply flared sides, a running slope of 13.3% for a 10 in run, a 1 ½ in lip and no detectable warning.

E. At the intersection of Winder and Russell there are 3 ramps.

- the northwest corner has an old ramp with a 3 inch lip and no level landing.
- The northeast corner has a solid 6 inch curb with no ramp.
- The southeast corner has a large lip.

F. The ramp from the parking lot to the Farmer's Market (between Market and Russell) creates a cross-slope on the sidewalk of 6.4%.

G. At the intersection of Winder and Riopelle there are 2 old ramps with no ramps crossing Winder.

- the southwest corner has no ramp.
- The northwest corner has a rolled, 2 inch curb.
- The southeast corner has a lip and a steep running slope.

23. In sum, the Eastern Market at its recently resurfaced intersections is not readily usable by and accessible to CCA, MPVA, their members and Mr. Jordan, Mr. Harris, Mr. Williams and similarly situated persons with mobility impairments. These defects should be corrected immediately.

#### **FOURTH STREET NEAR THE MASONIC TEMPLE AND MOTOR CITY CASINO**

24. Mr. Jordan has attended events at the Masonic Temple, and would like to visit the Motor City Casino. In year 2004, Detroit resurfaced Fourth Street was resurfaced from Calumet to Seldon and from Mack to Temple. Yet there are several defects at these intersections and sidewalks. For example, Temple and Fourth is the only intersection that is ramped to cross Fourth Street. There is no other place to cross Fourth in a wheelchair though pedestrians are clearly meant to cross Fourth at any of the intersections. Some other examples of the many problems are:

A. At the intersection of Fourth and Temple there are 2 new ramps crossing Fourth.

There are no ramps crossing Temple.

- The northwest ramp facing east has a reverse lip, and running slope of 16.6% and no level landing.
- The northeast ramp facing west has a running slope of 14.1% and no level landing.

B. At the intersection of Fourth and Charlotte there are 4 new ramps crossing Charlotte and no ramps crossing Fourth.

- The northwest ramp has a reverse lip and a cross-slope of 3.9% and no level landing.
- The northeast ramp has a 1 inch rolled curb and a running slope of 10.8%.
- The southeast corner has a 2 inch rolled curb, and running slope of 12.3% and no detectable warning.
- The southwest ramp has a reverse lip and no level landing.

25. Mr. Jordan and other members of Plaintiffs CCA and MPVA have used the intersections adjacent to the Masonic Temple and Motor City Casino and intend to use them in the future if the proper curb cuts are installed.

#### **FACTUAL SUMMARY**

26. Each of these sidewalks and intersections described above were resurfaced or otherwise altered by the City of Detroit during years 2004 and 2005, and contain cuts that suffer from one or more of the following defects:

- A. Running slope in excess of 8.33%;
- B. Cross slope in excess of 2%;
- C. No level landing at the top of the ramp;

D. Obstructions or "lips" at the juncture of the ramp with the street; and/or,

E. Improperly oriented or maintained truncated dome detectible warnings.

Plaintiffs demands that these ramps, sidewalks and intersections be brought into compliance as soon as possible. In addition, CCA and MPVA seek an Order that all future resurfacing and alterations in Detroit comply with the ADA, the Rehabilitation Act and Michigan law.

## V. CAUSES OF ACTION

### FIRST CAUSE OF ACTION: CLAIM UNDER TITLE II OF THE AMERICANS WITH DISABILITIES ACT

27. Plaintiffs bring this count under Title II of the Americans With Disabilities Act (ADA) for declaratory and injunctive relief, and for damages.

28. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Title II of the ADA defines the City of Detroit as a "public entity." 42 U.S.C. § 12131(1).

29. Title II of the Americans With Disabilities Act requires that when a public entity builds or alters any part of a facility after January 26, 1992, it shall to the maximum extent possible, be altered so that it is readily accessible to and usable by individuals with disabilities. 42 U.S.C. §§ 12146 & 12147; 28 C.F.R. § 35.151(a), (b) & (e); *Ability Center of Greater Toledo v. City of Sandusky, Ohio*, 133 F.Supp. 2d 589, 591-92 (N.D.Ohio 2001), *aff'd* 385 F.3d 901 at 904 (6<sup>th</sup> Cir. 2004)(City must install ADA-compliant curb ramps at all resurfaced intersections). The curb cuts must meet specific federal building and design standards, 28 C.F.R. § 35.151(c); *Tennessee v. Lane*, 541 U.S. 509, 124 S.Ct. 1978, 1993

(2004). Detroit has resurfaced or otherwise altered the intersections and sidewalks described above, but failed to install proper sidewalks and curb cuts.

30. By their actions complained of herein, Defendants have intentionally discriminated against Plaintiffs due to their disabilities. Plaintiffs are entitled to injunctive relief ordering the City to bring these and future services, programs or activities into compliance, compensatory damages and attorneys fees and costs.

#### SECOND CAUSE OF ACTION: CLAIM UNDER THE REHABILITATION ACT OF 1973

31. Plaintiffs bring this claim for declaratory and injunctive relief and for damages. The Rehabilitation Act requires that when a public entity that receives federal funding builds or alters any part of a facility, it shall to the maximum extent possible, be made so that it is readily accessible to and usable by individuals with disabilities. 29 U.S.C. § 794. “[n]o otherwise qualified individual with a disability...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a). Upon information and belief, the City receives Federal financial assistance. The Rehabilitation Act defines “program or activity” as “all of the operations of” a qualifying local government. 29 U.S.C. § 794(B)(1)(A).

32. As described above, the City has altered intersections and sidewalks without installing curb cuts that meet the required accessibility standards and codes. Each of these failures by the City has made each of these new or altered services, programs or activities not readily accessible to and usable by Plaintiffs. By their actions complained of herein, Defendants have intentionally discriminated against Plaintiffs due to its disabilities. Plaintiffs is entitled to injunctive relief ordering the City to bring these services, programs or activities into compliance, individual compensatory damages, and attorneys fees and

costs.

### THIRD CAUSE OF ACTION: CLAIMS UNDER MICHIGAN LAW

33. Plaintiffs bring this count for injunctive relief and damages. The above complained of failure by the City to construct, alter and maintain its services, programs or activities to be accessible to Plaintiffs also violates Michigan law at M.C.L. § 37.1301-02. Plaintiffs are entitled to compensatory damages, as well as injunctive and declaratory relief, attorneys fees and costs.

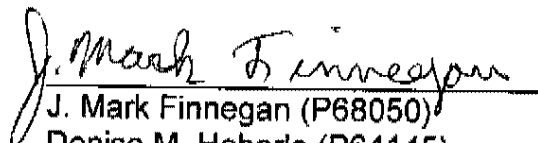
### VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek judgment against Defendants finding that:

1. The above described intersections and sidewalks have been altered by Defendants without meeting required federal and Michigan accessibility standards and codes;
2. Defendants are Ordered to bring the above described sidewalks into compliance with federal and Michigan accessibility laws;
3. Defendants intentionally violated the rights of Plaintiffs as set out above and award to Plaintiffs damages according to law;
4. In the future, Detroit is Ordered to meet all federal and Michigan standards when altering streets and intersections.
5. That Plaintiffs recovers an award of reasonable attorneys fees, costs, and expenses.

Plaintiffs further prays for such additional relief as the interests of justice may require.

Respectfully Submitted,



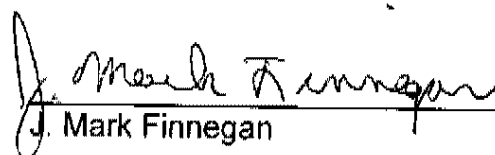
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**Certificate of Service**

I hereby certify that on this 29<sup>th</sup> day of November, 2005, I have served the foregoing First Amended Complaint by first class mail, electronic means and facsimile transmission upon Counsel for all Defendants at the following address:

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